

STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. JAMES P. NOECKER FORMAL COMPLAINT NO. 73
Judge, 45th Circuit Court
Centreville, MI 49032

_____ /

FORMAL COMPLAINT

The Michigan Judicial Tenure Commission (“Commission”) files this complaint against the Hon. James P. Noecker (“Respondent”), 45th Circuit Court Judge, serving St. Joseph County, Michigan. This action is taken pursuant to the authority of the Commission under Article VI, Section 30 of the Michigan Constitution of 1963, as amended and MCR 9.200 *et seq.* The filing of this Complaint has been authorized and directed by resolution of the Commission.

Respondent is, and at all material times was, a judge of the 45th Circuit Court in Centreville, Michigan. As a judge, he is subject to all the duties and responsibilities imposed on him by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205. Respondent is charged with violating his judicial and professional duties as set forth in the following paragraphs.

COUNT I

Respondent's Persistent Use of Alcohol

1. Respondent has been a judge of the 45th Circuit Court, Centreville, St. Joseph County, Michigan since 1981.

2. Respondent has had a history of alcohol-related problems going back at least to the mid-1990's.

3. In 1994-1995, Respondent completed a four-month substance abuse treatment program at West Michigan Addiction Consultants (WEMAC) in Grand Rapids. While at WEMAC, Respondent acknowledged he was an alcoholic.

4. Respondent later resumed the use of alcohol and began a two-year contractual arrangement with the Michigan State Bar Judges and Lawyers Assistance Program, which ran approximately from January 16, 2001 to January 16, 2003. Respondent subsequently concluded or terminated his participation in the program.

5. On March 12, 2003, Respondent crashed his vehicle into the side of a convenience store.

6. On March 24, 2003, the Michigan Supreme Court replaced Respondent as Chief Judge of the 45th Circuit Court by appointing Kalamazoo County Circuit Court Judge Philip D. Schaefer to serve in that capacity.

7. Thereafter, he voluntarily entered the WEMAC program for a second time on or about March 31, 2003. Respondent remained in residence until his premature discharge, approximately the third week of May, 2003, without completion of the program.

8. Respondent subsequently checked into the Hazelden program in Center City, Minnesota, which offers treatment for substance abuse. That facility released Respondent the latter part of June or early July, 2003.

9. As reflected above, Respondent has suffered repeated relapses from alcohol problems. His work at the court and the business of the court have suffered as a result. This includes, but is not limited to, not adhering to regular court hours, not timely deciding matters, inadequate docket management and not filing required reports with the State Court Administrative Office.

10. The conduct described in paragraphs 1 through 9, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;
- c. Habitual intemperance, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;

- d. Persistent failure to perform judicial duties, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended and MCR 9.205;
- e. Persistent neglect in the timely performance of judicial duties, contrary to MCR 9.205 (B)(1)(b);
- f. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- g. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- h. Failure to respect and observe the law, contrary to, among others, MCR 8.107 and MCR 8.110 (C)(5); and
- i. Conduct violative of MCR 9.104(1), and (2) in that such conduct:
 - (i) is prejudicial to the proper administration of justice; and
 - (ii) exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

COUNT II

VIOLATIONS OF THE LAW AND MAKING FALSE STATEMENTS TO THE POLICE

11. On March 12, 2003, Respondent was operating a motor vehicle in White Pigeon Township, Michigan. Respondent turned his vehicle into the

parking lot of the Klinger Lake Trading Post, a grocery store located in that community.

12. Respondent failed to properly control his vehicle and crashed into the grocery store at approximately 5:20 p.m.

13. As a consequence of Respondent's conduct, damages in the amount of approximately \$15,000 - \$20,000 were inflicted to the structure and goods.

14. There is reason to believe Respondent consumed alcohol prior to the collision, and that alcohol was a factor in the collision.

15. Respondent alighted from his vehicle and entered the store. After brief conversation with occupants of the store, Respondent left without waiting for the arrival of the police.

16. Respondent arrived home at approximately 6:00 p.m. Representatives of the Michigan State Police came to Respondent's home shortly afterwards.

17. The state police spoke separately with Respondent and his wife. Respondent's wife stated she had been in Respondent's presence since his arrival and that he had consumed no alcohol during that time. During Respondent's interview, he stated that he had consumed a single glass of vodka after arriving home. He denied having consumed any alcohol prior to crashing into the Klinger Lake Trading Post.

18. Respondent voluntarily submitted to a preliminary breath test ("PBT") administered by the state police. The test produced a reading of .10%, which gives

rise to the statutory presumption that Respondent was under the influence of intoxicating liquor. MCL 257.625a. The test results were obtained at 7:22 p.m.

19. Respondent subsequently admitted responsibility for careless driving, MCL 257.626 (b).

20. Respondent's statements to the police concerning consumption of alcohol were false, and he knew them to be false. Respondent made similar false statements to the news media.

21. The conduct described in paragraphs 10 through 19, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;
- c. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- d. Conduct involving impropriety and the appearance of impropriety in that Respondent's conduct evidenced or gave the appearance he had consumed alcoholic beverages which caused or contributed to the incident, contrary to the Code of Judicial Conduct, Canon 2A;
- e. Failure to respect and observe the law, contrary to, among others, MCL 257.626b (careless driving), MCL 257.625 (driving under the influence of intoxicating liquor) and the Code of Judicial Conduct, Canon 2B; and

f. Conduct violative of MCR 9.104(1), (2), and (3) in that such conduct:

- (1) is prejudicial to the proper administration of justice;
- (2) exposes the legal profession or the courts to obloquy, contempt, censure or reproach; and
- (3) is contrary to justice, ethics, honesty, or good morals.

COUNT III

FALSE STATEMENTS TO JUDICIAL TENURE COMMISSION

22. On May 30, 2003, the Commission sent Respondent a 28-day letter, inviting his comment, pursuant to MCR 9.207(C)(1).

23. Respondent submitted an answer, dated June 25, 2003, to the Commission's 28-day letter. That answer falsely denied he had been drinking prior to his vehicle striking the Klinger Lake Trading Post. Additionally, Respondent's answer also falsely stated the only alcohol he had consumed was a single glass of vodka after returning home.

24. The conduct described in paragraphs 21 and 22, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;

- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- c. Failure to cooperate with a reasonable request made by the Commission in its investigation of a judge, contrary to MCR 9.205(B)(1)(f);
- d. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- e. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A; and
- f. Conduct violative of MCR 9.104(1), (2) and (3) in that such conduct:
 - (i) is prejudicial to the proper administration of justice;
 - (ii) exposes the legal profession or the courts to obloquy, contempt, censure or reproach; and
 - (iii) is contrary to justice, ethics, honesty, or good morals.

Pursuant to MCR 9.209, Respondent is advised that an original verified Answer to the foregoing Complaint, and nine copies thereof, must be filed with the Commission within fourteen (14) days after service upon Respondent of the

Complaint. Such Answer shall be in a form similar to the answer in a civil action in a circuit court and shall contain a full and fair disclosure of all facts and circumstances pertaining to Respondent's alleged misconduct. The willful concealment, misrepresentation, or failure to file such answer and disclosure shall be additional grounds for disciplinary action under the Complaint.

MICHIGAN JUDICIAL
TENURE COMMISSION

By: _____
Paul J. Fischer (P35454)
Examiner
3034 W. Grand Blvd., Ste. 8-450
Detroit, Michigan 48202
(313) 875-5110

DATED: August 20, 2003

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